



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/166478

PRELIMINARY RECITALS

Pursuant to a petition filed June 03, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on June 30, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether petitioner's appeal of an MA overpayment was timely.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Pang Thao-Xiang
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On March 17, 2015 the agency sent the petitioner a notice stating that she was overpaid \$1,644.00 in Medicaid benefits for the period from September 1, 2013 through July 31, 2014 due to client error.

3. On June 1, 2015 the Division of Hearings and Appeals received the petitioner's request for fair hearing.

DISCUSSION

MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665.
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

See also the department's MA Handbook, Appendix 6.2.1.1. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

An appeal of a negative action concerning MA must be filed within 45 days of the action. Wis. Stat. § 49.45(5). All negative notice sent by the Department include standard language informing recipients of how to appeal and the time limits for appeal. If the appeal is untimely the Division of Hearings and Appeals does not have jurisdiction to review its merits. There is no "good cause" exception to the time limit.

In this case the March 17, 2015 notice explained that the petitioner had 45 days to file an appeal. 45 days from March 17, 2015 is May 1, 2015. The Division of Hearings and Appeals did not receive the petitioner's appeal request until June 1, 2015. This is one month beyond the 45 day deadline. I note that there were also two FoodShare overpayments. The time limit to appeal a FoodShare overpayment is 90 days. Thus, the petitioner's appeal of her FoodShare overpayment in case number FOP-166477 was timely. Because this appeal, is untimely I do not have jurisdiction to decide this case.

I note that even if I had jurisdiction, I would find that that the agency correctly concluded that the petitioner was overpaid \$1,644.00 in Medicaid benefits for the period from September 1, 2013 through July 31, 2014 due to client error. I decided the FoodShare overpayment and reviewed this case in great detail. The petitioner provided paystubs to the agency in June 2013. The agency used these paystubs as verification during the petitioner's July 2013 renewal. The agency incorrectly budgeted these paystubs by failing to include overtime, holiday, and funeral pay. On July 16, 2013 the agency sent the petitioner a notice stating that she had to report her monthly gross income to the agency if the income exceeded \$3,637.50. She had until the 10th day of the following month to report this information. The petitioner exceeded this amount in July. She was to report that by August 10. These changes would have been effective September 1, 2013. This date is the start of the medical overpayment time period.

On January 8, 2014 the petitioner completed a six-month report form (SMRF). On the form the petitioner continued to under report her income. The petitioner never reported her actual income to the agency

between August 2013 and July 31, 2014. Her benefits ended July 31, 2014. This is also the end of the medical overpayment time period.

CONCLUSIONS OF LAW

The petitioner's appeal of an MA overpayment was not timely.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 31st day of July, 2015

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 31, 2015.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability